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MEMORANDUM

FROM: The Utah Constitutional Revision Commission

DATE: May 28, 2009

SUBJECT: Proposed Constitutional Amendment - Post Conviction Appeals

The Constitutional Revision Commission (CRC) is continuing its study of the issues surrounding a proposed constitutional amendment dealing with post conviction appeals. Most recently this issue was raised by S.J.R. 14 – Challenging the Legality of a Conviction or Sentence (Bramble).

The CRC has discussed in general the motivation and general objectives surrounding a possible constitutional amendment in previous meetings. The CRC members are appreciative of the strong positions held by supporters and opponents. However, the CRC feels that further study would be best facilitated by a discussion of specific aspects associated with this general issue. To that end, the CRC is requesting that interested parties provide written information to the CRC on the following specific questions. These questions have been categorized into several broad categories. Obviously we would like to hear public comments on responses to the same questions at upcoming CRC meetings. The CRC will begin this review process at its June 11, 2009 meeting.

(1) Purpose for a Constitutional Amendment

The Utah State Legislature has enacted major legislation to address the post conviction appeals process (the Post Conviction Relief Act – PCRA). The purpose of the act is to reduce the time and causes of action that can be raised in post conviction actions. There have been subsequent modifications to the act. Comments made during legislative debate on S.J.R. 14 stated that a primary motivation was that Utah Courts were not following the provisions of the PCRA and therefore a constitutional amendment is needed to ensure that the law would be followed. Please comment on the following:

1. What are the specific actions or results that are sought by an S.J.R. 14 –type amendment?

Proposed Constitutional Amendment - Post Conviction Appeals
May 28, 2009

2. Is there evidence that the current Post Conviction Relief Act (PCRA) is not being followed by the Utah Courts? If so please provide specific examples.
3. If there are needed changes in post conviction activities can they be accomplished with statutory changes or other means as opposed to a constitutional amendment? Why is a constitutional amendment the preferable or necessary remedy for these concerns?

(2) Relationship Between S.J.R. 14 and Other Constitutional Provisions

S.J.R. 14 proposed an amendment to Article VIII of the Utah Constitution (Judicial Article). Comments made during the 2009 legislative debate stated that S.J.R. 14 would have no impact on the provisions of Article I, Section 5 – Habeas Corpus. That provision indicates Habeas Corpus may not be suspended except in very limited circumstances. The language of S.J.R. 14 states, however, that the proposed amendment would supersede any other conflicting provisions.

1. If the stated purpose of S.J.R. 14 is to completely restrict the authority of the courts in post conviction matters, can that objective be accomplished without restricting Article I, Section 5 – Habeas Corpus?
2. If the language of S.J.R. 14 were utilized and the current language of Article 1, Section 5 retained, what would be the likely impact of these two possible competing constitutional provisions?

(3) Relationship with the Federal Courts

Some concerns have been expressed that near absolute restrictions on judicial review of all post conviction relief will actually increase pressure on the federal courts to become the primary forum for judicial examination of post conviction appeals. Please comment on the legal and administrative ramifications associated with a shift of many of these cases to the federal court system.

(4) The Relationship Between the Judiciary and the Legislature

Proposed Constitutional Amendment - Post Conviction Appeals
May 28, 2009

After several years of study the Constitutional Revision Commission recommended a comprehensive review of Article VIII – the Judicial Article to the Utah Legislature in 1984. The Legislature approved the proposal and submitted it to the public, which approved the measure overwhelmingly at the 1984 election. The new judicial article included language specifically recognizing traditional common law extraordinary writs – some of which had existed in the Utah State Constitution since statehood. The CRC study also viewed the inclusion of these provisions as a longstanding traditional safeguard against rare possibility of miscarriages of justice and as a formal acknowledgment of the role of the judiciary in the separation of powers.

The language of S.J.R. 14 would eliminate this recognized constitutional authority as it relates to post conviction appeals. Please comment on the impact of this change as it relates to the historic role of the judiciary and the 1984 rewrite of the Judicial Article that was adopted by Utah voters.

(5) The Death Penalty/Other Criminal Appeals

The entire focus of the S.J.R. 14 legislative discussion was on death penalty cases. Yet, the application of the provisions of the proposed amendment would impact all aspects of post conviction jurisprudence. Please comment on the possible impact of S.J.R. 14 on non-death penalty cases as well as existing criminal rules such as Rule 22, Utah Rules of Criminal Procedure. In addition, there have been some suggestions that a S.J.R. 14 – like provision may impose greater pre-conviction constitutional requirements on the criminal justice system. Please comment.